608 Fourth Avenue
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December 12, 2008

Sen. Eric Coleman
Rep. Art Feldman
Co-Chairmen of the Continuing Legislative Committee on Planning & Economic Development
Connecticut General Assembly
Legislative Office Building
Hartford, CT 06106

Re: Norwich -- Proposal to Reverse Recent Change to State Plan

Dear Sirs:

I write, in my personal capacity, to express my concerns and those of the community of planners across the country about the reports of the potential action you might take with regard to the state plan.

I am a professional Certified Planner and Professional Planner and have been in planning for over 30 years. I am the former President of the American Planning Association, the leading organization for planners with over 40,000 members. My interest in good planning extends far beyond my current position and the geography of where I live and work.

The reports I have seen say that you voted a change on July 10, 2008, to enable water and sewer to be extended to a site within the City of Norwich, an urbanized center, to support a moderate density age-restricted development. From what I have heard, the decision made good sense in terms of promoting growth in urbanized areas and supporting housing objectives.

What is stunning, regardless of the merits of one plan designation or another, is that it is now reported that you are seriously considering reversing the decision just a few months later but after the developers have expended great sums, time and effort in furtherance of their development plans based on

your decision to make it possible for the site to be served by public utilities.

You may not know it, but Connecticut has been the subject of national derision for being the most extreme state in the entire country when it comes to its rejection of comprehensive planning. I enclose an article by Edward Sullivan and have highlighted the part about Connecticut.

If you reverse yourself at this juncture, you eviscerate the planning process, reject your commitment to long-range comprehensive planning, and make Connecticut the last places anyone would choose for a development project.

If you cannot trust the General Assembly to stick to its plan, who can you trust?

Sincerely,

R. Codd

Richard Codd, FAICP

Recent Developments in Land Use,
Planning and Zoning

Recent Developments in Comprehensive Planning Law

Edward J. Sullivan*

I. Introduction

THE LAW REGARDING THE RELATIONSHIP between the comprehensive plan and land use regulation continues to develop. This recent developments report covers cases examining that relationship decided from October 1, 2006, through September 30, 2007.

As noted in previous reports, the cases dealing with this relationship fall into three major categories. The "unitary view" holds that there is no requirement for a plan separate from the zoning or other regulations and actions and that, in any event, any existing plan has no legal effect. The "planning factor view" gives the plan some significance as a factor, but not as the exclusive or even the most significant one, in evaluating land use regulations and actions. The weight to be given to the plan varies from state-to-state and from case-to-case. Finally, the "planning mandate view" describes the plan as a quasi-constitutional document that governs the regulatory ordinances and actions of the local government implementing the plan.

Other recent developments include interpretation of the plan and issues surrounding amendments to plans. The two theses of these reports, developed over the past few years, are that: (1) slowly and incrementally, the comprehensive plan has been invested with an increasing role in judging land use regulations or actions so that, either by legislation or court decision, separate plans are required and, once in place, are a significant, if not decisive, factor in evaluating regulations and

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actions;[1] and (2) the judicial discussion of comprehensive plans has tended to shift away from whether such plans are required and towards the significance to be given to them.

II. The Unitary View

Reflecting trends of the last few years, there is a continuous decline in the number of cases in which the plan is either not required to exist or need not be a separate document from the zoning regulations, or in which the plan plays no role in the evaluation of land use regulations, zone changes, permits or other land use actions.

Once again, Connecticut was the chief exponent of this view in 2007. Two reported cases illustrate this point. *Timber Trails Associates v. Planning & Zoning Commission*[2] involved an unsuccessful challenge at the trial court to amendments to a town's zoning maps brought by landowners affected by those changes. Under Connecticut law, towns are required to review and revise their "master plan."[3] Among the unsuccessful appeal arguments challenging the grant of the change were that the amendments did not support the master plan and were thus invalid—an argument the court found difficult to support[4] saying:

> [W]e turn to the question of whether the amendments were adopted in accordance with Sherman's comprehensive plan of development, and constituted a proper subject for regulation under § 8–2[3] [sic]. 'A comprehensive plan has been defined as a

1. *See* Advisory Committee on City Planning and Zoning, A Standard City Planning Enabling Act, United States Dep't of Commerce (1928), *available at* http://www.planning.org/growingsmart/pdf/CPEnablingAct1928.pdf. Three views of that relationship are discussed in Edward J. Sullivan & Laurence Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement*, 9 URB. L. ANN. 33 (1975). It is also taken up again more recently in Edward J. Sullivan & Matthew Michel, Ramapo *Plus Thirty: The Changing Role of the Plan in Land Use Regulation*, 35 URB. LAW. 75 (2003).

2. 916 A.2d 99 (2007).

3. *Id.* at 104 (citing CONN. GEN. STAT. § 8-23(a) (1) (2008)). The "master plan" in this case sets forth the town's capital improvement program. The effect of the amendments, *inter alia*, was to raise the minimum lot size to 80,000 square feet. *Id.* at 105; *see also* Roundtree v. Planning & Zoning Comm'n, 2007 WL 2570349, at *7 (Conn. Super. Ct. Aug. 14, 2007) ("The comprehensive plan must be distinguished from the community's plan of development, or Master Plan, prepared by the planning and zoning commission pursuant to § 8-23 of the General Statutes. Although the plan of development is controlling as to municipal improvements and the regulation of subdivisions of land, the master plan does not control the zoning board in its enactment of zoning regulations or changes in zone boundaries. In these areas, it is merely advisory." (footnotes omitted)); *see also* Moutinho v. Planning & Zoning Comm'n, 2007 WL 1470419, at *12–13 (Conn. Super. Ct. Apr. 20, 2007) (where the master plan was "merely advisory").

4. *Timber Trails*, 916 A.2d at 110–11 (The court expressed the usual deference to local officials, saying it was unwilling to substitute its judgment for theirs, especially as the local government had given its reasons for its actions.).

> general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties.' In the absence of a formally adopted comprehensive plan, a town's comprehensive plan is to be found in the scheme of the zoning regulations themselves.[5]

It is important to note that no zoning district boundaries were changed by the challenged amendments—only the text of the regulations themselves.[6]

Similarly, *Konigsberg v. Board of Aldermen*[7] involved both legislative amendments to the text of the city's zoning regulations and a site plan approval to facilitate a new public school. The court noted the city's obligation to adopt and amend zoning regulations "in accordance with a comprehensive plan."[8] In addition to the general language found in the *Timber Trails* case,[9] the court used a common phrase from Connecticut cases involving the relationship between the plan and regulations: "The requirement of a comprehensive plan is generally satisfied when the zoning authority acts with the intention of promoting the best interests of the entire community."[10]

The court found the proposal consistent with the "comprehensive plan of development," which had identified the site for a school,[11] and noted that the city's governing body agreed, making broad findings on both the text and map amendments.[12] The court reviewed those documents as legislative acts to be given wide discretion and determined that the court's only function is to determine whether the record supports the decision.[13] That test was easily met, as it found "ample evidence" to support the changes.[14]

There are two Mississippi cases that also take the unitary approach. In *Cockrell v. Panola County Board of Supervisors*,[15] neighbors appealed

5. *Id.* at 111 (citation omitted). The court found that protection of the town's water supply was an adequate basis for the change. *Id.*

6. *Id.* at 112; *see also* Cimino v. Town of Woodbridge, 2007 WL 2245899, at *7 (Conn. Super. Ct. July 17, 2007) (same).

7. 930 A.2d 1 (2007).

8. *Id.* at 558.

9. *See supra* text accompanying note 5.

10. *Konigsberg*, 930 A.2d at 19; *see also* Lee & Lamont Realty v. Vernon Planning & Zoning Comm., 2007 WL 1532766, at *5 (Conn. Super. Ct. May 11, 2007).

11. *Konigsberg*, 930 A.2d at 12.

12. *Id.* at 14.

13. *Id.* at 18; *see also* Dutko v. Planning & Zoning Bd., 2007 WL 241215, at *4 (Conn. Super. Ct. Jan. 17, 2007) (stating that the record must support decision); *see also* Riverfront Future Partners v. Planning and Zoning Comm'n, 2007 WL 3010774, at *11 (Conn. Super. Ct. Oct. 3, 2007) (same).

14. *Konigsberg*, 930 A.2d at 18–22.

15. 950 So. 2d 1086 (Miss. Ct. App. 2007).

a trial court decision upholding a zone change from an agricultural to an industrial classification, along with an accompanying site plan. Conformity with the comprehensive plan was mentioned, but did not play a role in the case.[16] In *Adams v. Mayor & Board of Aldermen*,[17] the comprehensive plan is also mentioned in the context of "spot zoning," but the relationship with land use regulation is not elaborated upon, except to say that there was no "spot zoning" in this case.[18]

III. The Planning Factor View

The "Planning Factor" view is now the majority position and it is illustrated in a number of cases over the past year. In a Delaware case, *Upfront Enterprises, LLC v. Kent County Levy Court*,[19] an Adequate Public Facilities Ordinance was found not to be an element of a comprehensive plan and was thus inapplicable under state law. When the developer attempted to assert that the plan included the ordinance, the court found it did not—and while the ordinance did have the force and effect of law, the plan did not.[20]

In *Cesare, LLC v. City of Bedford*,[21] an applicant sought a declaration and damages for denial of rezoning and an Indiana trial court granted summary judgment to the city. The court of appeals rejected plaintiff's contention that the city violated applicable statutory law[22] to the effect that the plan commission and governing body "pay reasonable regard to," *inter alia*, its comprehensive plan.[23] The court said it was satisfied in its review of the record that defendant did consider the plan in denying the rezoning.

In a Kentucky case, *Morris v. Carter*,[24] neighbors challenged the grant of a rezoning and used a statute[25] that requires, in granting a zoning map amendment, a local government to find it in agreement with

16. *Id.* at 1097.
17. 964 So. 2d 629 (Miss. Ct. App. 2007).
18. *Id.* at 636. Instead, the court found the standards for rezoning to accord with the "change or mistake" rule and public need. *Id.* at 634.
19. 2007 WL 2459247 (Del. Ch. Aug. 9, 2007).
20. *Id.* at 9; *see also* DiFrancesco v. Mayor & Town Council of Elsmere, 2007 WL 1874761, at *4 (Del. Super. Ct. June 28, 2007) ("If Council wanted to make the Master Plan a zoning reality, then it should rezone those areas that do not comport with that plan (a course of action with other consequences). It cannot use the subdivision process as it did here as a back door rezoning.").
21. 857 N.E.2d 1050 (Ind. Ct. App. 2007).
22. *See* IND. CODE § 36-7-4-603 (2008).
23. *Cesare*, 857 N.E.2d at 4.
24. 2007 WL 2278169 (Ky. Ct. App. Aug. 10, 2007).
25. KEN. REV. STAT. ANN. § 100.213 (2008).

the comprehensive plan or make certain findings along the lines of the "change or mistake" rule.[26] The defendant official, however, found the rezoning consistent with the plan and the appellate court agreed.[27]

A Kansas case, *Shephard v. City of Lawrence*,[28] involved a trial court grant of summary judgment in favor of a city's denial of plaintiff's site plan application on grounds that the comprehensive plan did not support a higher density at the site. The court used the non-exclusive factors for review set out in *Golden v. City of Overland Park*,[29] among which included consistency with the comprehensive plan, to affirm the denial.[30]

In *Trail v. Terrapin Run, LLC*,[31] a statute[32] required that special exceptions "conform to" the plan and be compatible with the neighborhood, but the zoning ordinance and Maryland case law had different formulations. The court said that "consistency," "harmony," and "conformity," all mean essentially the same thing and required a review of both the plan and the land use regulations as a whole, but that the plan was an advisory instrument unless otherwise provided in the local regulations.[33] The court concluded that general compatibility was sufficient and "strict adherence" was not.[34]

North Carolina appears to use the "planning factor" approach. In *McDowell v. Randolph County*,[35] neighbors challenged a rezoning on several bases, including that it was allegedly not in accordance with the

26. *Carter*, 2007 WL 2278169, at *7.

27. *Id.* ("A local legislative body is not required to follow the Comprehensive Plan in every detail. The Comprehensive Plan serves as a scheme of general planning and zoning objectives in an area with what can be perceived as the best way to zone an area with the current and foreseeable development. But in no way is the Comprehensive Plan a final plan and it is continually subject to modification as developments continue to impact that land and change its foreseeable use. In fact, the Comprehensive Plan was intended to '. . . [serve] as a guide rather than a straightjacket.'" (citations omitted)).

Similarly, in *Shelby Property Owners Ass'n, Inc. v. Icon Properties*, 2007 WL 419536 (Ky. Ct. App. Feb. 9, 2007), plaintiffs challenged rezonings under this same statute and the court found the consistency findings inadequate. In contrast, in *Baesler v. Lexington-Fayette Urban County Gov't*, 2007 WL 2812417 (Ky. Ct. App. Sept. 28, 2007), the court upheld the findings of inconsistency with the plan as a ground for denying a rezoning.

28. 2007 WL 2695831 (Kan. Ct. App. Sept. 14, 2007).

29. 584 P.2d 130 (Kan. 1978).

30. *Shepard*, 2007 WL 419536, at *22.

31. 920 A.2d 597 (Md. Ct. Spec. App. 2007).

32. MD. ANN. CODE art. 66B, § 1.00(k) (2008).

33. *Trail*, 920 A.2d at 602.

34. *Id.*; *see also* Archers Glen Partners, Inc. v. Garner, 933 A.2d 405 (Md. Ct. Spec. App. 2007) (demonstrating the effectiveness of the plan in land use decision-making to be dependent on local law).

35. 649 S.E.2d 920 (N.C. Ct. App. 2007).

county's comprehensive plan. Applying a state supreme court decision that held compatibility with the comprehensive plan was a factor in evaluating a rezoning,[36] the court held that the compatibility factor required consistency with a "comprehensive zoning plan" to promote the general welfare and comply with the enabling legislation.[37] The court found, to the contrary, that the rezoning was in "direct contravention" to the plan and determined the compatibility factor was not met.[38]

New Jersey also takes this approach on occasion, notwithstanding the strong planning laws of that state. In *Riya Finnegan, LLC v. Township Council*,[39] a property owner challenged a rezoning from neighborhood commercial to office park, frustrating the owner's development expectations, and the trial court reversed the same as "arbitrary and capricious."[40] On appeal, the court said this legislative decision furthered a comprehensive zoning scheme, which required at least one of fifteen general zoning purposes.[41]

New York also seems conflicted in application of the plan to zoning regulations. In *Baumgarten v. Town Board*,[42] the appellate court reviewed a trial court dismissal of a challenge to a rezoning, stating that the plaintiff must show the same to be "arbitrary or unreasonable."[43] Noting that the Town had extensively reviewed the project and correctly found it fell within the guidelines for a planned unit development district, the court applied a test that the rezoning must be part of a "well-considered and comprehensive plan calculated to serve the

36. *See Chrismon v. Guilford County*, 370 S.E.2d 579, 583 (1988).

37. *McDowell*, 649 S.E.2d at 925.

38. *Id.* at 927. *But see* Childress v. Yadkin County, 650 S.E.2d 55 (N.C. Ct. App. 2007) (The same court determined that, even if the county engaged in spot zoning, it had reasonable grounds to do so, which grounds included compatibility with the comprehensive plan.).

39. 926 A.2d 402 (N.J. Super. Ct. App. Div. 2007).

40. *Id.* at 406–07.

41. *Id.* at 407–08 ("Although municipalities should generally limit zoning ordinances to those consistent with the Master Plan, it may adopt an ordinance inconsistent therewith, provided the municipal governing body approves it 'by affirmative vote of a majority of the full authorized membership . . . with the reasons . . . for so acting set forth in a resolution recorded in its minutes when adopting such a zoning ordinance.'

With these principles as our guide, we start our analysis by noting that, in adopting the zoning ordinance at issue, the Township Council adhered to the procedures set forth in [state law]. The Township Council acknowledged the ordinance's inconsistency with the municipal Master Plan; and thereafter unanimously set forth its reasons for adopting the ordinance in a contemporaneous resolution." (citations omitted)); *see also* Nouhan v. Bd. of Adjustment, 920 A.2d 700, 704–05 (N.J. Super. Ct. App. Div. 2007) (a municipality adopting an ordinance not "substantially consistent" with certain elements of plan must do so with findings and by majority vote of entire body).

42. 35 A.D.3d 1081 (N.Y. App. Div. 2006).

43. *Id.* at 813.

general welfare of the community," and found that test easily met.[44] In *Western New York District, Inc. v. Village of Lancaster*,[45] a church bought land in an area planned and zoned for industrial uses that did not allow churches. When plaintiff challenged its exclusion from this area, the court upheld the denial,[46] based on the local ordinance that prohibited any permit that was not "in accord with the comprehensive plan."[47]

Pennsylvania also weighed in with *Hanson Aggregates Pennsylvania, Inc. v. College Township Council*,[48] in which plaintiff challenged a township's zoning ordinance for allegedly failing to provide for reasonable mineral development. The township successfully defended its position by, among other things, pointing to a state law that required zoning be "generally consistent" with the local comprehensive plan "or, where none exists, with the municipal statement of community development objectives and the county comprehensive plan."[49] The court was satisfied that the township council correctly balanced the competing statutory and planning objectives and affirmed.

Finally, in *Tolman v. Logan City*,[50] landowners unsuccessfully appealed from the trial court grant of summary judgment on a challenge of the denial of a rezoning from a single family to a multi-family classification. The court answered that the county had a general plan objective to preserve single family areas and prevent the proliferation of multi-family housing in those areas as part of its general plan objectives, which was a sufficient reason to deny the rezoning.[51]

44. *Id.*; Trude v. Town Bd., 17 Misc. 3d 1104, 2007 WL 2811372 (N.Y. Sup. Ct. 2007) (landowner unsuccessfully challenged ordinance regulating construction and siting of windmills, but court found plan language supporting maintenance of town's "rural character" and preservation of agricultural land to be a sufficient basis for the adoption of the ordinance); Meteor Enterprises v. Bylewski, 38 A.D.3d 1356 (N.Y. App. Div. 2007) (developers challenged elimination of residential planned development sections from code on grounds the elimination was inconsistent with town's master plan, but court noted town retained a clustered housing zoning district, so there was no "clear conflict" with the plan); *see also* Schweichler v. Vill. of Caledonia, 45 A.D.3d 1281, 1282 (N.Y. App. Div. 2007) (rezoning and site plan were challenged and generally upheld, with the court finding that, even though the plan was not a "formal enactment," the rezoning was part of a "well-considered and comprehensive plan calculated to serve the general welfare of the community" (citing Daniels v. Van Voris, 241 A.D.2d 796, 799 (N.Y. App. Div. 1997))).

45. 17 Misc. 3d 798 (N.Y. Sup. Ct. 2007).

46. *Id.* at 758–60.

47. LANCASTER, N.Y., VILLAGE LAW § 152-70(A)(2)(f) (2005).

48. 911 A.2d 592 (Pa. Commw. Ct. 2006).

49. 53 PA. CONS. STAT. § 10606(2)(j) (2008).

50. 167 P.3d 489 (Utah Ct. App. 2007).

51. *Id.* at 495.

IV. Planning Mandate View

Where the plan is given dispositive effect by statute or case law, the consequences of a bright line standard profoundly changes the analyses used by appellate courts in evaluating decisions involving rezoning, discretionary permits and land use actions.

Recent California cases acknowledge the statutory requirement of "consistency"[52] to the plan, but do not require rigid adherence. In *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*,[53] neighbors challenged a project approval, *inter alia*, on plan consistency grounds. The court rejected these allegations, stating:

> As the City observes, petitioners point to isolated general plan goals, construe them in their favor, then paint the evidence in their favor to try to show the Project conflicted with those goals. This mode of argument is ineffectual. A project is "consistent" if it furthers the objectives and policies of the general plan and does not obstruct their attainment. But "General plans ordinarily do not state specific mandates or prohibitions. Rather, they state 'policies,' and set forth 'goals.' " The body that adopts general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. It follows that a reviewing court gives great deference to an agency's determination that its decision is consistent with its general plan. "Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them and it has a broad discretion to construe its policies in light of the plan's purposes." General plans have goals and policies relating to disparate issues, and most projects involve trade-offs among them. Such flexibility does not equate to "inconsistency." "A given project need not be in perfect conformity with each and every general plan policy."[54]

Florida cases last year were stricter in interpreting a plan consistency statute. In *Payne v. City of Miami*,[55] plaintiffs appealed the grant of a Future Land Use Amendment ("FLUM") from Industrial to Restricted Commercial and an implementing zone change and Major Special Use Permit to allow a multi-family development for two twelve-story structures for 633 dwelling units. The court observed that, in upholding a judgment for the city, the administrative law judge seemed confused as to the location of the site and did not apply two pertinent policies.[56] The court remanded the case, finding the city interpretation of the first

52. CAL. GOV'T CODE § 65300 (West 2008).
53. 153 Cal. App. 4th 238, 62 Cal. Rptr. 3d 651 (2007) (depublished).
54. 62 Cal. App. 3d at 662 (citations omitted); *see also* Fonseca v. Gilroy, 148 Cal. App. 4th 1174, 56 Cal. Rptr. 3d 374 (2007) (The court upheld the city's plan in the face of allegations that its housing element did not comply with state law, finding that element "substantially" complied with law.).
55. 2007 WL 2428453 (Fla. Dist. Ct. App. 2007).
56. *Id.* at 7.

policy (dealing with the extent of the "Port of Miami River") was inconsistent with the text of the plan and previous interpretations[57] and another policy (identifying a goal of "no net loss" of land for water dependent uses) was not sufficiently addressed.[58]

In *Elm Street/McCracken Pike Preservation Alliance, Inc. v. Siegelman*,[59] a Kentucky court reversed the denial of a rezoning, finding that it met the plan and was supported by substantial evidence, ordering a city to amend its zoning maps in accordance with the decision.

V. Plan Interpretation

When plans are significant, interpretation of those plans is also significant. A California case from the last year illustrates this point. *Friends of Lagoon Valley v. City of Vacaville*,[60] involved a challenge to a project on grounds that it was allegedly inconsistent with the city's General Plan.[61] The court said there was a presumption of regularity and said its review was "highly deferential" so that the plaintiff must show an abuse of discretion and that the city may weigh and balance its policies in reviewing the project.[62] It added that "perfect conformity" was not required but conformity with the objectives, policies, general land uses and programs was required.[63] Plans usually do not contain specific mandates or prohibitions but rather set forth goals and policies.[64] The plan itself states that its land use map element is a guide for zoning and need not be identical to that zoning; rather, it could be flexible to meet plan objectives and policies.[65] In upholding the grant of development approval, the court allowed layouts that were not consistent with the "illustrative" schematics in the plan and density bonuses that were not contemplated in the plan.[66]

57. *Id.* at 7–11.
58. *Id.* at 11–16. Similarly, in *Saadeh v. City of Jacksonville*, 969 So. 2d 1079 (Fla. Dist. Ct. App. 2007), neighbors successfully challenged rezoning of land along a river from low density to Planned Unit Development (PUD) classification to accommodate a rowing club, as the club was not permitted in low density zones and thus the new zone which would have allowed the club was inconsistent with the plan. *Id.* at 1084–86.
59. 2007 WL 3228090 (Ky. Ct. App. 2007).
60. 65 Cal. Rptr. 3d 251 (2007).
61. *Id.* at 257.
62. *Id.* at 259.
63. *Id.*
64. *Id.*
65. *Friends of Lagoon Valley*, 65 Cal. Rptr. 3d at 259.
66. *Id.* at 264–72. In *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno*, 150 Cal. App. 4th 683, 58 Cal. Rptr. 3d 102 (2007), a case involving allegations of inconsistency in both the General Plan and a subordinate area plan, the court applied a

VI. Plan Amendments

If a development cannot meet a plan or if a local government wishes to amend a plan to carry out a new policy, the plan may be amended. The procedures and criteria for those amendments will then occupy center stage.

In *San Joaquin Raptor Rescue Center v. County of Merced*,[67] plaintiff challenged the adoption of General Plan amendments for a California County on several grounds, one of which was that the amendments related to a particular area and thus must be a "specific plan" consistent with the General Plan.[68] The court pointed out that these were General Plan amendments and there was no authority for the proposition that the General Plan can never be amended or that amendments to that plan cannot relate to particular areas.[69]

In a Florida federal case, *Buck v. City of Cedar Key*,[70] landowners were denied a plan amendment that corrected an alleged error in the designation of their land as "conservation" when it did not meet the criteria for that designation. In finding a substantive due process violation because the denial was not related to a legitimate governmental purpose, the court cited testimony of city official and experts to order the amendment.[71]

Minnesota had one of the most significant plan cases last year in *Mendota Golf, LLP v. City of Mendota Heights*,[72] in which the plan designated land for a golf course and the zoning allowed residential use. The court rejected the plaintiff's assertion that the city had a duty to conform its plan to existing zoning, finding the city was obliged to review its plan on a periodic basis under state law[73] and resolve the conflict.[74] In another plan amendment and golf course case, *Wensmann*

"deferential" standard of review and applied the law in effect when the project was approved, finding that a Model Ordinance in a plan appendix was for future legislative consideration, and not a standard of approval. *Id.* at 139–40.

In *Plumb v. City of Los Angeles*, 2007 WL 586894 (Cal. Ct. App. Feb. 27, 2007), the grant of a use variance was challenged, *inter alia*, on plan consistency grounds. The court used the same deferential standard given to the legislative body that formulated the plan to weigh and balance competing plan policies. *Id.*

67. 2007 WL 3173400 (Cal. Ct. App. Oct. 31, 2007).
68. *Id.* at 3.
69. *Id.*
70. 2006 WL 3498143 (N.D. Fla. 2006).
71. *Id.* at 2.
72. 708 N.W.2d 162 (Minn. 2006).
73. MINN. STAT. § 473.864(2) (2008).
74. *Mendota Golf*, 708 N.W.2d at 172.

Realty, Inc. v. City of Eagan,[75] plaintiff golf course owner challenged the denial of a plan amendment from a "park" designation to allow residential development of an allegedly uneconomic golf course under the due process and takings clauses. The court used the *Mendota* case to uphold the decision on the due process challenge,[76] but used the *Penn Central Transportation Co. v. New York City*[77] factors to consider whether the denial of the plan amendment effected a taking and remanded the matter for a correct application of one of those factors.[78]

Finally, in an Oregon case, *Herring v. Lane County*,[79] the court remanded a plan amendment for failure to apply statutory law[80] with regard to gross income from resource issues.[81] This case, like the others in this section for last year, emphasizes the need to conform to procedures and criteria for plan amendments. The failure to do so may have grave consequences.

VII. Conclusion

Plans are an increasingly important part of the legal landscape in land use law. They are generally given weight in evaluating zone changes, permits and actions, and have their own caselaw regarding interpretation and amendment procedure. The center of gravity increasingly seems to favor giving the plan greater weight in evaluating land use decisions. Given that zoning decisions were, for the last eighty years, to be "in accordance with the comprehensive plan,"[82] it may be about time.

75. 734 N.W.2d 623 (Minn. 2007).
76. *Id.* at 630–31.
77. 438 U.S. 104, 124 (1978).
78. *Wensmann*, 734 N.W.2d at 631–43.
79. 171 P.3d 1025 (Or. Ct. App. 2007).
80. OR. REV. STAT. § 197.247(1)(a) (1991).
81. *Herring*, 171 P.3d at 1030–31.
82. Advisory Committee on City Planning and Zoning, Standard Zoning Enabling Act § 3, United States Dep't of Commerce (1926).